



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

www.deq.virginia.gov


Ann F. Jennings
Secretary of Natural and Historic Resources

David K. Paylor
Director
(804) 698-4000

GUIDANCE MEMORANDUM

Subject: Civil Enforcement Manual- Chapters 2 through 4 and Chapter 6 (CEM-01, CEM-04, CEM-05, CEM-06, CEM-07, CEM-10, CEM-11, CEM-11A, and CEM-11B)

To: Central Office Enforcement Managers, Regional Enforcement Managers, and Regional Enforcement Specialists (electronic distribution)

From: Tiffany Severs, Director
Division of Enforcement 

Date: January 3, 2022

Copies: Jeffery Steers, James J. Golden, Regional Directors, Division Directors, Central Office Compliance Managers, Angela Jenkins, Melissa Porterfield (electronic distribution)

Summary:

This guidance will delete the Civil Enforcement Manual Introduction and supersedes Chapters 2 through 4 (last updated in November 2016) and Chapter 6 (various portions last updated 1999, 2007, and 2016) of the DEQ Civil Enforcement Manual on Virginia Regulatory Town Hall (ID: 4012, CEM-01, CEM-04, CEM-05, CEM-06, CEM-07, CEM-10, CEM-11, CEM-11A, and CEM-11B). These chapters of the Civil Enforcement Manual covers general compliance and enforcement procedures, the timely and appropriate policy for processing cases, procedures for calculating civil charges, and adversarial administrative proceedings.

Public comment on these updates was accepted from October 25, 2021 through November 24, 2021. This guidance is effective as of January 3, 2022 and shall be applied to enforcement cases

resolving Notices of Alleged Violations issued from that date forward; the newly effective manual shall not be applied to enforcement cases initiating prior to January 3, 2022.

A summary of the changes are as follows:

Chapter 2: General Enforcement Procedures

This chapter provides guidance on the procedures that DEQ staff use to address alleged violations of enforceable environmental requirements, including: (1) notifying responsible parties; (2) referring cases for enforcement action and deciding on a plan for the case; (3) resolving enforcement cases with and without Responsible Party consent; (5) special procedures for underground storage tanks (USTs) and for sanitary sewer overflows (SSOs); (6) monitoring enforcement orders and agreements; and (7) closing enforcement cases. Changes were limited to providing clarification and additional instruction where needed.

Chapter 3: Priority, Timeliness, and Certainty of Enforcement Actions

This chapter describes the enforcement procedures to help ensure an appropriate, timely, and consistent response to alleged noncompliance. Changes were made to clarify case prioritization.

Chapter 4: Civil Charges and Civil Penalties

Civil charges and civil penalties are authorized by the Virginia Code to penalize noncompliance, to serve as an incentive against future noncompliance, and support DEQ's mission "to protect the environment of Virginia in order to promote the health and well-being of the Commonwealth's citizens." This chapter sets out the specific procedure and criteria used by DEQ to calculate civil charges and civil penalties in administrative enforcement actions, including: (1) orders issued by consent; (2) special orders issued after an informal fact finding proceeding; and (3) special orders issued after a formal hearing.

Changes were made to provide clarifications where needed, increase consistency across all media, and inflationary adjustments to all the civil charge worksheets. Substantive changes were made in various water programs to address program experience. Significant instructional and penalty calculation procedures for solid and hazardous waste enforcement actions to align these programs with how penalties are calculated in other media.

Chapter 6: Adversarial Administrative Actions

This chapter addresses how to prepare for and conduct informal fact-finding proceedings, formal hearing and Section 10.1-1186 special order proceedings. It also addresses procedures intended for use by Supreme Court hearing officers conducting formal hearings for DEQ and its three regulatory boards pursuant to Va. Code § 2.2-4020. Although prompted by a legislative directive to develop procedures for formal hearings pursuant to Va. Code §§ 10.1-1309, 10.1-1455, and 62.1-44.15, it is recommended that these Procedures be used for any formal hearing conducted for DEQ.

Changes to this chapter include updates and consolidation of adversarial proceedings procedures that were found in separate guidance documents and covered various aspects of these proceedings. After consolidation, statutory updates and clarifications were made as appropriate.

Electronic Copy:

An electronic copy of this guidance is available on:

- The Virginia Regulatory Town Hall under the Department of Environmental Quality (<http://www.townhall.virginia.gov/L/gdocs.cfm?agencynumber=440>)

Contact Information:

Please contact the appropriate media Central Office Enforcement Manager with any questions regarding the application of this guidance to a specific case.

Certification:

As required by Subsection B of § 2.2-4002.1 of the APA, the agency certifies that this guidance document conforms to the definition of a guidance document in § 2.2-4101 of the Code of Virginia.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any alternative method. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Chapter 3

Appropriate, Consistent, and Timely Enforcement

This chapter describes the enforcement procedures to help ensure an appropriate, consistent, and timely response to alleged noncompliance. The Department of Environmental Quality (DEQ) has a statewide presence with enforcement staff in the Richmond central office and in six regional offices. The Division of Enforcement collaborates with federal, state and local officials in a comprehensive strategy to thoroughly respond to alleged violations of environmental statutes, regulations, and permit requirements in a manner consistent with the [Agency's mission, values, and goals](#).

Through the use of administrative, civil, and criminal enforcement actions, the DEQ enforcement staff selects the most appropriate enforcement tool for each action. Each enforcement action begins with an evaluation of the least adversarial method appropriate to the alleged violation. An appropriate enforcement action addresses each alleged violation and the enforcement response is proportionate to the alleged violation. An enforcement response that is appropriate to the alleged violation deters similar noncompliance by the Responsible Party and throughout the regulated community.

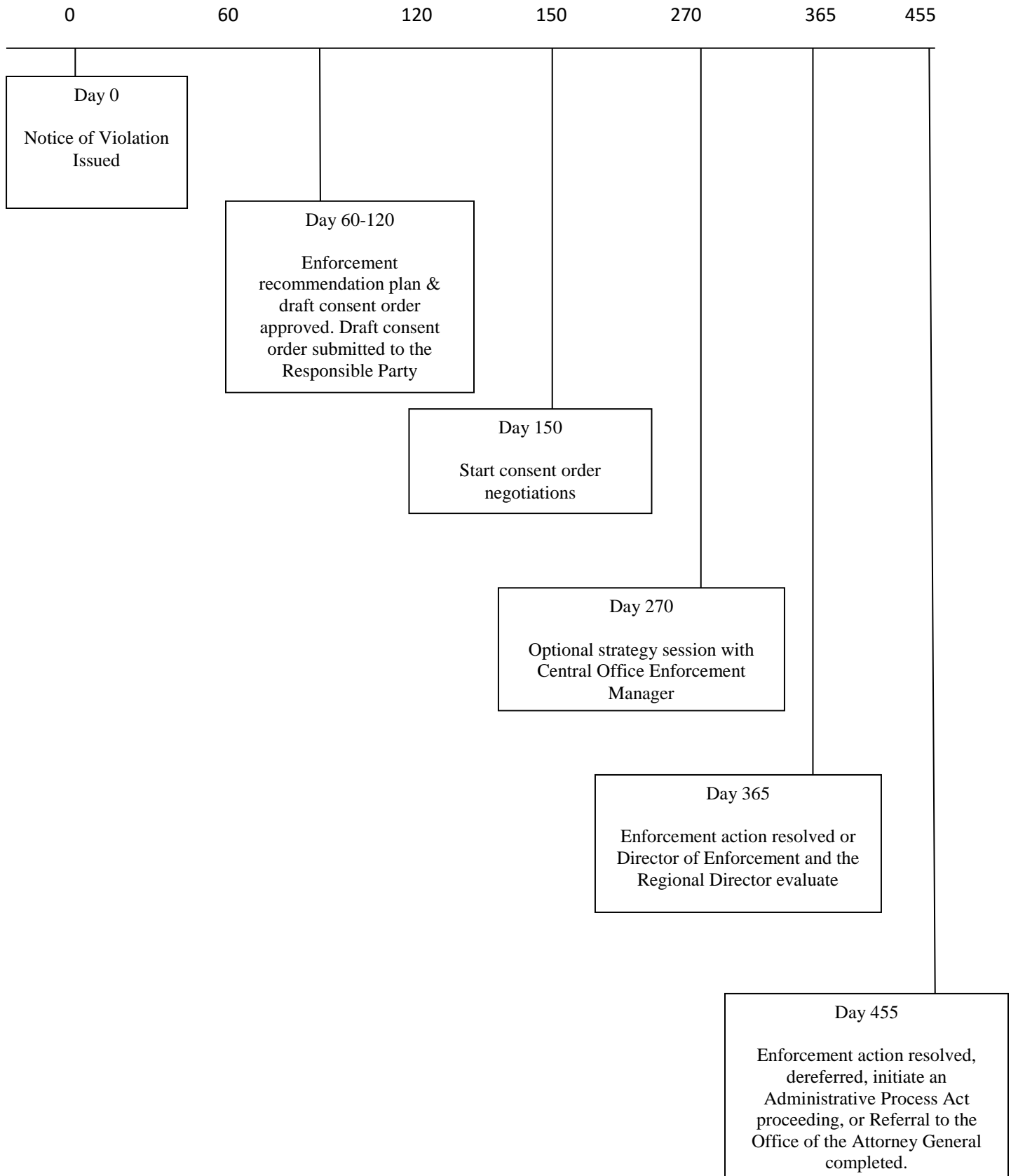
A consistent enforcement program means that members of the regulated community should expect similar responses to comparable alleged violations, given similar impacts on human health and the environment, regardless of where in the Commonwealth the violation occurs. The DEQ recognizes that each enforcement action is fact-specific, and it is unlikely that two enforcement actions will be entirely similar.¹ While consistency in the DEQ's approach to alleged violations is an important factor in an enforcement program, it neither means a strict adherence to past decisions that may no longer be appropriate nor does it guarantee a resolution that is exactly the same as a prior enforcement action.

The DEQ chooses to resolve alleged noncompliance in most cases through an administrative process with the consent of the responsible party that will result in a judicially enforceable document referred to as a consent order. The DEQ strives to address and resolve all enforcement actions in a timely fashion, considering the nature of the alleged violations and the availability of enforcement resources. The Enforcement Response Timeline sets forth benchmarks for processing enforcement actions across all programs, unless the enforcement action involves a High Priority Violation or an issue of Significant Noncompliance.² DEQ will endeavor to process all enforcement actions in accordance with the Enforcement Response Timeline; however, certain enforcement actions may take longer to resolve due to the complexity of the issues involved. Emergency situations or enforcement actions presenting an imminent and substantial threat to human health or the environment should be processed on an expedited basis.

¹ Staff should reference various tools, e.g. Compliance Auditing System, or consult with appropriate program staff for assistance in determining the priority level for an enforcement action.

² The DEQ follows the policies of the [United States Environmental Protection Agency](#) to ensure timely and appropriate responses to alleged violations of environmental laws in those cases involving an issue of Significant Noncompliance (SNC) in the Resource Conservation and Recovery Act (RCRA) and Clean Water Act (CWA), and a High Priority Violation (HPV) in the Clean Air Act (CAA). Each program has its own specific criteria for making this determination.

Enforcement Response Timeline



Day 0

- Day zero represents the date the Notice of Violation was issued and when the alleged violations were referred to the Division of Enforcement for resolution.

Day 60 – 120

- Day 60 through 120 represents the time allotted for enforcement staff to prepare and receive concurrence for the Enforcement Recommendation Plan and a draft consent order, and submit the draft consent order to the Responsible Party for review and comment.

Day 150

- It is expected that after giving the Responsible Party adequate time to review the draft consent order, negotiations should begin no later than day 150 (30 days after the draft consent order was issued). In the event negotiations are not actively underway, enforcement staff should remind the Responsible Party of other administrative options to resolve any impasse or to resolve the enforcement action (see Chapters 2 and 6).

Day 270

- At day 270 (after four months of negotiation) enforcement staff may schedule a strategy session with the Central Office Enforcement Manager to provide an update of the negotiations and discuss a plan/schedule for moving the enforcement action towards resolution.

Day 365

- DEQ's goal is to resolve all enforcement actions within 365 days of referral. If the enforcement action has not been resolved by consent within 365 days of referral, the Director of Enforcement and the Regional Director should discuss and evaluate options for resolution.

Day 455

- If an enforcement action has not been resolved by day 455, the Director of Enforcement and the Regional Director should discuss and evaluate whether the enforcement action specific facts warrant the start of an Administrative Process Act proceeding, seeking assistance from the United States Environmental Protection Agency or another federal agency, preparing a referral to the Office of the Attorney General, or closing/termination of the enforcement action.

Enforcement Action Prioritization

Enforcement actions that are referred for enforcement are initially prioritized chronologically on a first come, first served basis; however, there are a number of reasons enforcement staff will adjust their work load to prioritize a newer enforcement action above existing enforcement actions that have been in the queue longer. Due to limited staffing resources and time available to meet the goals of the Enforcement Response Timeline, enforcement staff should prioritize their work load based on the severity of the violations, the extent of any potential or actual harm to human health and the environment, substantial public/political interest, and HPV/SNC designation.³

It is expected that enforcement staff will prioritize enforcement actions in which there is imminent or potential serious harm to human health and the environment.

Lower priority cases usually present little or no risk of potential or actual harm to human health or the environment or are minor deviations from regulatory requirements.

Medium priority cases usually present some risk of potential or actual harm to human health or the environment or are moderate deviations from regulatory requirements.

Higher priority cases usually present a substantial risk of potential or actual harm to human health or the environment or are significant deviations from regulatory requirements.⁴

Enforcement Action Priority Matrix

Harm to Human Health & Environment	Serious	<i>High</i>	<i>High</i>	<i>High</i>
	Moderate	<i>Medium</i>	<i>Medium</i>	<i>High</i>
	Marginal	<i>Low</i>	<i>Medium</i>	<i>Medium</i>
		Marginal	Moderate	Serious
Deviation from the Regulatory Program				

³ For additional information on how to determine the severity of the violation or the extent of any potential or actual harm to the environment, and examples, please refer to Chapter Four of the Enforcement Manual.

⁴ Enforcement actions that involve a High Priority Violation in the Air Program or are considered in Significant Noncompliance in the Hazardous Waste Program and Water Program are always classified as high priority cases and should be processed according to the US EPA Timely & Appropriate policy.